

DEPARTMENT OF TAXATION

Amendments to Chapter 18-235
Hawaii Administrative Rules

October 29, 2004

SUMMARY

Chapter 18-235, Hawaii Administrative Rules, is amended by

1. Amending §18-235-98.

§18-235-98 Returns; form, verification and authentication, time of filing. (a) Extensions of time for filing income tax returns; in general. The director of taxation may grant a reasonable extension of time for filing any return, declaration, statement, or other document required under chapter 235, HRS, provided that no extension shall be for more than six months, except as otherwise provided by statute for cases in which exceptional circumstances require additional time, including cases of persons who are outside the United States.

(b) Automatic extension of time for filing individual income tax return. Any individual taxpayer required to file an income tax return, declaration, statement, or other document under chapter 235, HRS, is granted an automatic four-month extension to file the tax return after the date prescribed for filing. The taxpayer need not file an application form to request an extension. However, if the taxpayer makes a payment of tax, the payment shall be submitted with the form prescribed by the department.

(c) Granting of the automatic four-month extensions for individual taxpayers shall be subject to the following conditions:

- (1) The tax return shall be filed within the time granted by the automatic extension;
- (2) The tax return shall be accompanied by payment of the tax to the extent not already paid (i.e., the amount of tax required to be shown on the return, reduced by any prior payments, including withholding and estimated tax payments); and
- (3) An extension shall not be granted if the taxpayer is bound by a court order to file a tax return, declaration, statement, or other document on or before the prescribed due date.

The failure to file a tax return penalty under section 231-39(b)(1), HRS, shall not be imposed on any return filed on or before the extended due date if

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these conditions are met. However, if the stated conditions are not met, the automatic extension shall be deemed invalid and penalties and interest shall be assessed on the amount of tax owed as if no automatic extension had been granted (i.e., the computation of penalties under section 231-39(b)(1), HRS, and interest under section 231-39(b)(4), HRS, shall relate back to the due date prescribed by the statute).

(d) Automatic extensions for partnerships, estates, trusts, or real estate mortgage investment conduits. A partnership or entity classified as a partnership, estate, trust, or real estate mortgage investment conduit may obtain an automatic three-month extension. Automatic extensions for partnerships, estates, trusts, or real estate mortgage investment conduits shall be subject to the following conditions:

- (1) On or before the due date prescribed by the statute, an application for automatic extension of time to file a Hawaii income tax return, declaration, statement, or other document must be submitted to the taxation district office where the income tax return is required to be filed. If a payment accompanies the application for the extension, the amount of the payment shall be shown on the application;
- (2) The application for automatic extension must show the full amount properly estimated as the tax liability for the taxable year. A properly estimated tax liability means the taxpayer made a bona fide and reasonable attempt at the time the extension was submitted to locate and gather all of the necessary information to make a proper estimate of tax liability for the taxable year;
- (3) The tax return shall be filed within the time specified by the automatic extension and shall be accompanied by payment of the tax to the extent not already paid;

- (4) An automatic extension of time for filing a partnership, estate, trust, or real estate mortgage investment conduit return, declaration, statement, or other document under this section does not operate to extend the time for filing an income tax return, declaration, statement, or other document for any partner, or member of an entity classified as a partnership, any beneficiary of the estate or trust, or a residual or regular interest holder of a real estate mortgage investment conduit; and
- (5) An extension shall not be granted if the taxpayer is bound by a court order to file a tax return, declaration, statement, or other document on or before the due date.

The failure to file a tax return penalty under section 231-39(b)(1), HRS, shall not be imposed on any return filed on or before the extended due date if these conditions are met. However, if the stated conditions are not met, the automatic extension shall be deemed invalid and penalties and interest shall be assessed on the amount of tax owed as if no extension had been granted (i.e., the computation of penalties under section 231-39(b)(1), HRS, and interest under section 231-39(b)(4), HRS, shall relate back to the due date prescribed by the statute).

(e) Automatic extension of time for filing corporate income tax returns or corporate income tax returns for entities classified as a corporation.

- (1) In general. A corporation or entity classified as a corporation shall be allowed an automatic six-month extension of time to file its income tax return, declaration, statement, or other document. The application for an automatic extension (Form N-301) must be filed on or before the date prescribed for the filing of the return and shall be granted subject to the following conditions:

- (A) On or before the due date of the return prescribed by the statute, there shall have been paid, through estimated tax payments or a payment accompanying the application for the extension, an amount equal to the properly estimated tax liability for the taxable year. A properly estimated tax liability means the taxpayer made a bona fide and reasonable attempt at the time the extension was submitted to locate and gather all of the necessary information to make a proper estimate of tax liability for the taxable year. If a payment accompanies the application for the extension, the amount of the payment shall be shown on the application; and
 - (B) The income tax return shall be filed within the time specified by the automatic extension and shall be accompanied by payment of the tax to the extent not already paid.
- (2) Consolidated returns. If a consolidated return is to be filed under section 235-92(2), HRS, a parent corporation or parent entity classified as a corporation may request an automatic extension for its subsidiaries. In this case, the name, address, and employer identification number of each member of the affiliated group, for which the extension is desired, must be listed. The filing of an application for extension of time by a parent corporation or parent entity classified as a corporation is not considered an exercise of the privilege of filing a consolidated return. If the privilege of filing a consolidated return is not exercised, the parent corporation or parent entity classified as a corporation

and members of the affiliated group shall attach a copy of the application for extension to their completed separate income tax returns.

- (3) Signature. The application for extension shall be authorized by the signature of the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other duly authorized officer permitted to act on behalf of the corporation, or by the signature of any partner, manager, or member of an entity classified as a corporation, or an entity that is a partner or member of the entity classified as a corporation provided the individual or entity is permitted to act on behalf of the entity.

(f) Termination. The director of taxation may terminate the automatic extension at any time by mailing a notice of termination to the taxpayer. In the case of a corporation or entity classified as a corporation, notice of termination shall be mailed to the corporation or entity classified as a corporation, or to the person who requested the extension for the corporation. The notice shall be mailed at least ten days prior to the termination date designated in the notice.

(g) Additional extension of time to file return. If the appropriate income tax return, declaration, statement, or other document cannot be filed on or before the end of the applicable automatic three-month or four-month extension period and an additional extension is necessary, the taxpayer shall file an application for the additional extension as prescribed by the department. The additional extension of time to file a return shall be subject to the following conditions:

- (1) The application for additional extension of time to file shall be filed prior to the

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- expiration of the time specified by the automatic extension previously received;
- (2) The application shall be accompanied by payment of at least ninety per cent of the tax to the extent not already paid;
 - (3) On the application, the taxpayer shall show reasonable cause explaining the need for additional time to file the return;
 - (4) The tax return shall be filed within the time granted by the additional extension of time to file;
 - (5) The tax return shall be accompanied by payment of the tax to the extent not already paid (i.e., the amount of tax required to be shown on the return, reduced by any prior payments, including withholding and estimated tax payments);
 - (6) Except as otherwise provided by statute for persons outside of the United States, the aggregate extension of time to file a return shall not exceed six months, except as otherwise provided by statute, computed from the prescribed due date of the return; and
 - (7) An extension shall not be granted if the taxpayer is bound by a court order to file a tax return, declaration, statement, or other document on or before the original due date.


The failure to file a tax return penalty under section 231-39(b)(1), HRS, shall not be imposed on any return filed on or before the further extended due date if these conditions are met. However, if the stated conditions are not met, the additional extension shall be deemed invalid and penalties and interest shall be assessed on the amount of tax owed as if no extension had been granted (i.e., the computation of penalties under section 231-39(b)(1), HRS, and interest under section 231-39(b)(4), HRS, shall relate back to the due date prescribed by the statute).

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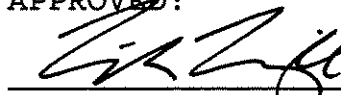
(h) Time for payment of tax not extended by extensions. Any extension to file an income tax return under section 235-98, HRS, shall not extend the time for payment of any tax due on the return, but shall only extend the time to file the return. Interest under section 231-39(b)(4), HRS, shall be assessed on any amount of tax that is not paid on or before the prescribed due date. [Eff 2/16/82; am 6/28/93; 1/1/94; 10/13/94; 1/5/98, am JUN 04 2005] Auth: HRS §§231-3(9), 231-39, 235-98, 235-118) (Imp: HRS §§231-39 and 235-98)

Amendments to Chapter 18-235, Hawaii Administrative Rules, on the summary page, dated October 29, 2004, were adopted on October 29, 2004, after public notice was published in the Hawaii Star Bulletin, The Garden Island, The Maui News, Hawaii Tribune-Herald, and West Hawaii Today on November 28, 2003.

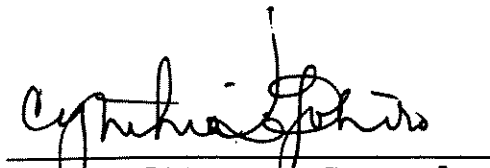
These amendments shall take effect ten days after filing with the office of the Lieutenant Governor.


KURT KAWAFUCHI
Director of Taxation

APPROVED:


LINDA LINGLE **MAY 24 2005**
Governor
State of Hawaii

APPROVED AS TO FORM:


Deputy Attorney General